IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6451 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMAD SHAFIC BABUBHAI MIRATA SAIYAD

Versus

POLICE COMMISSIONER

Appearance:

MR MV PATEL for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Mr.I.M.Pandya for learned advocate Mr.M.V.Patel on behalf of the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1,2 & 3.

#. The detention order dated 8-7-1999 passed by respondent No. 1 - The Police Commissioner, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at running page 5 interalia indicate that the petitioner is alleged to have been involved in a prohibition case registered vide C.R. No : 5108/99dated 6-7-1999 at Naroda Police Station, in which, the country made liquor has been seized. Over and above, that two witnesses on assurance of their anonymity have given their statement dated 13-6-99 and 25-6-1999 disclosing the bootlegging activities of the petitioner and have narrated the incidents alleged to have occurred on 25-6-99 and 30-6-1999 respectively. That on the basis of the said material, the respondent No.1 - The Commissioner of Police, Ahmedabad as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that as stated in the grounds of detention, the petitioner was in police custody in respect to prohibition case registered against him on the date when the order is served. That the grounds does not disclose any antecedent history or prejudicial activities of the petitioner in past proximate of time. That under these circumstances without resorting to the remedy to claim cancellation of bail, if granted, under Section 437(5) of CrPC, the action taken against the petitioner of passing the detention order amounts to non application of mind.

#. In the matter of RASHEEDA AGRAWAL VS. STATE OF UTTER PRADESH reported vide AIR 1988 SC 596, the Supreme Court has held in para 11 that "The possibility of Court granting bail may not be sufficient nor the bald statement that a person would repeat his criminal activities would be enough. There must also be credible information or cogent reasons apparent on the record that

the detenu if enlarged on bail would act prejudicially to the interest of public order".

#. That in the present matter, scrutiny of grounds of detention, it appears that no incidents of past criminal activities of the petitioner is stated nor there is material much less a cogent and convincing material providing compelling reasons to the detaining authority to pass a detention order against the persons who is already in custody. That in the absence of any material providing rational connection to the conclusion drawn by the detaining authority that the petitioner is likely to be released on bail by passage of time and having got himself released on bail is likely to continue his prejudicial activities, it is difficult to uphold the order because the said statement appears to have been based on apprehension rather than the cogent material.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 8-7-1999 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - MOHMAD SHAFIC BABUBHAI MIRATA SAIYAD is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 29-2-2000 [A.K.Trivedi, J.]

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